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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,823	05/03/2001	Francisco A. Uribe	S-94,613	7902

7590 07/24/2002

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[REDACTED] EXAMINER

CREPEAU, JONATHAN

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1745

DATE MAILED: 07/24/2002

4

Please find below and/or attached an Office communication concerning this application or proceeding.

ME4

Office Action Summary	Application No.	Applicant(s)
	09/848,823	URIIBE ET AL.
	Examiner	Art Unit
	Jonathan S. Crepeau	1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 May 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-5 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-5 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.

4) Interview Summary (PTO-413) Paper No(s) _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 8-203537 (Uchida et al). Regarding claims 1 and 5, the reference teaches a fuel cell comprising a polymer electrolyte membrane (2) having an electrocatalytic surface thereon in Figure 2. A porous anode backing comprising carbon particles (4; the white particles in Fig. 2(A)) abuts the electrolyte membrane at a first surface thereof. A CO oxidation catalyst layer (12) comprising a non-precious metal such as Sn, Cu, Co, or Fe is present on the second surface of the anode backing (see claim 4 and Fig. 2 of the reference). Regarding claim 5, each of these metals has at least two oxidation states in the range of 1 and 4. Regarding claims 2 and 3, the electrocatalyst (5) is Pt or Pt/Ru alloy (see claim 3 and Example 1 of the reference). Regarding claims 1 and 5, in Example 1, the reference discloses that the electrocatalytic surface is formed by mixing the electrocatalyst with the polymer of the polymer electrolyte membrane, and then bonding it on an anode side of the membrane. Regarding claim 4, the layer of oxidation catalyst further includes carbon (4), which is a hydrophobic material. Regarding the recitation in claims 1 and 5 that the fuel cell is “usable in a reformate fuel stream containing diluted hydrogen fuel with CO as an impurity and with added air,” this limitation recites an intended use and does not have to be

accorded patentable weight, pursuant to MPEP §2111.02. If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Thus, the instant claims are anticipated.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Crepeau whose telephone number is (703) 305-0051. The examiner can normally be reached Monday-Friday from 9:30 AM - 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan, can be reached at (703) 308-2383. The phone number for the organization where this application or proceeding is assigned is (703) 305-5900. Additionally, documents may be faxed to (703) 305-5408 or (703) 305-5433.

Any inquiry of general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


Patrick Ryan
Supervisory Patent Examiner
1700

JSC

July 15, 2002